11-8-2011

State v. Satcher Respondent's Brief Dckt. 38278

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 38278
	)	
vs.	)	
	)	
TIA JO SATCHER,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Tia Jo Satcher appeals from her judgment of conviction for grand theft.

Statement Of The Facts And Course Of The Proceedings

Danelle Ostolasa-Mendiola went shopping at Walmart on Christmas Eve at about 11:30 a.m. (Trial Tr., p. 176, L. 8 – p. 177, L. 13; p. 178, Ls. 3-19.) After completing her shopping she put her purse in the shopping cart and went to her car and unloaded the cart. (Trial Tr., p. 177, L. 14 – p. 180, L. 19.) She did not have a view of the cart at all times when she unloaded. (Trial Tr., p. 180, Ls. 20-25.) Once done unloading she saw that the cart was empty, including not having her purse in it, and assumed she had put her purse in the car. (Trial Tr., p. 181, Ls. 1-20.) In fact, she did not have her purse. (Trial Tr., p. 181, L. 21 – p. 182, L. 8.)

At 12:34, shortly after the purse went missing, Ms. Ostolasa-Mendiola's credit card was used at a Flying J gas station adjacent to the Walmart. (Trial Tr., p. 182, L. 13 – p. 185, L. 2; p. 190 Ls. 12-23; p. 210, Ls. 5-10.) Video from the Flying J shows Satcher in a van, with the male driver of the van buying gas at that time. (Trial Tr., p. 307, L. 2 – p. 311, L. 22; State's Exhibit 2.)

The police began following Satcher at the Towne Square Mall on an unrelated matter about one and one-half hours after Ms. Ostolasa-Mendiola's credit card had been used at the convenience store. (Trial Tr., p. 221, L. 24 – p. 225, L. 24.) The police followed the van in which Satcher was a passenger as it went across the street from the mall to the parking lot of the Toys-R-Us and then

onto Westpark, south on Milwaukee, east on Franklin, south on Cole, west on Overland, and into the parking lot of the Walmart. (Trial Tr., p. 225, L. 25 – p. 227, L. 24.) The police made contact with Satcher and the male driver, Robert Minor, in the Walmart parking lot. (Trial Tr., p. 228, L. 2 – p. 231, L. 11.) Satcher was on her cell phone at that time. (Trial Tr., p. 230, L. 25 – p. 231, L. 6.) The van's gas gauge was full. (Trial Tr., p. 234, Ls. 1-20.)

At around 2:30, about three hours after the purse went missing, Ms. Ostolasa-Mendiola received a call from Satcher, who stated she had found the purse in the trash dumpsters at Walmart. (Trial Tr., p. 186, L. 2 – p. 187, L. 9.) Satcher, however, said she could not talk at that time because she was being pulled over by the police. (Trial Tr., p. 187, Ls. 10-13.) After confirming to Ms. Ostolasa-Mendiola that the purse contained a driver's license and credit cards Satcher hung up. (Trial Tr., p. 187, L. 14 – p. 188, L. 8.) When the police made contact with her, Satcher's first statement was that she was returning the purse, which was the first the police knew about any issue involving a purse. (Trial Tr., p. 232, Ls. 3-13.) A couple of minutes after talking with Satcher, Ms. Ostolasa-Mendiola received a call from the police stating that they had her purse. (Trial Tr., p. 188, Ls. 9-12; p. 192, Ls. 15-24.)

When contacted by a detective at the police station, before being questioned or confronted with any evidence, Satcher denied having used Ostolasa-Mendiola's credit card. (Trial Tr., p. 300, Ls. 14-24.) During the interview she stated that she had discovered the purse in a shopping cart at Walmart between 11:50 and 12:30. (Trial Tr., p. 302, Ls. 5-13; p. 304, Ls. 7-10.)

Satcher denied having used the credit card while it was in her possession but did not deny that her male companion used it, and acknowledged that the credit card had been used to buy gas for the van at the Flying J. (Trial Tr., p. 304, L. 11 – p. 305, L. 18.)

The state charged Satcher with grand theft of lost property. (R., pp. 33-34, 119-20.) The jury returned a guilty verdict. (R., p. 153.) Satcher filed a timely notice of appeal from the judgment. (R., pp. 157, 161.)

ISSUES

Satcher states the issues on appeal as:

1. Was there insufficient evidence in this case to support the State's allegation of grand theft of lost property in the form of a financial transaction card?

2. Did the district court err when it permitted the State, over Ms. Satcher's objection, to elicit testimony from a police officer as to his opinion of whether Ms. Satcher's denial of guilt was truthful?

3. Did the prosecutor commit misconduct when he intentionally elicited testimony from one witness regarding his opinion of Ms. Satcher's truthfulness in denying guilt of the charged offense?

4. Did the district court err when it admitted evidence in the form of a restitution order under the auspices of I.R.E. 609 where the restitution order was not a criminal conviction and was not admitted for any purpose related to Ms. Satcher's credibility?

5. Does the cumulative error doctrine require reversal in this case?

(Appellant's brief, p. 14.) The state rephrases the issues as:

1. The evidence showed that Satcher had possession of the purse for over two hours; that a credit card in the purse was used by Satcher's companion to buy gas; and that Satcher contacted the victim only while literally in the act of being contacted by the police. Has Satcher failed to show that a rational jury could not conclude that Satcher did not take reasonable measures to return the purse and its contents to the owner?

2. Has Satcher failed to show reversible error in the admission of opinion testimony about whether Satcher's statements to police were truthful because any such error was harmless?

3. Has Satcher failed to show reversible error in the admission of evidence that she owed restitution jointly with Robert Minor in association with a prior felony conviction because such error was harmless?

4. Has Satcher failed to show cumulative error?

ARGUMENT

I.
Satcher's Claim That The Evidence Is Insufficient To Show That She Did Not Take Reasonable Measures To Return The Purse And Its Contents To The Owner Is Meritless

A. Introduction

Satcher contends the only reasonable conclusion to be drawn from the evidence is that she took reasonable measures to return the stolen property and that she did not withhold the purse or its contents from Ms. Ostolasa-Mendiola with intent to deprive her of her property. (Appellant's brief, pp. 15-20.) This argument is meritless.

B. Standard Of Review

An appellate court will not set aside a judgment of conviction entered upon a jury verdict if there is substantial evidence upon which a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Miller, 131 Idaho 288, 292, 955 P.2d 603, 607 (Ct. App. 1997); State v. Reyes, 121 Idaho 570, 826 P.2d 919 (Ct. App. 1992); State v. Hart, 112 Idaho 759, 761, 735 P.2d 1070, 1072 (Ct. App. 1987). In conducting this review the appellate court will not substitute its view for that of the jury as to the credibility of witnesses, the weight to be given to the testimony, or the reasonable inferences to be drawn from the evidence. Miller, 131 Idaho at 292, 955 P.2d at 607; State v. Knutson, 121 Idaho 101, 822 P.2d 998 (Ct. App. 1991); Hart, 112 Idaho at 761, 735 P.2d at 1072. Moreover, the facts, and inferences to be drawn

from those facts, are construed in favor of upholding the jury's verdict. Miller, 131 Idaho at 292, 955 P.2d at 607; Hart, 112 Idaho at 761, 735 P.2d at 1072.

C. Satcher's Argument That The Evidence Is Insufficient Is Frivolous

To prove theft of stolen property the state had to prove that Satcher intended either to deprive the victim of her property or to appropriate the same to herself or another. I.C. § 18-2403(1). The state also had to prove that Satcher did not take reasonable measures to return the property to its owner. I.C. § 18-2403(2)(c). The evidence established that Satcher had Ms. Ostolasa-Mendiola's purse and its contents for over two hours; her boyfriend used a credit card from the purse to buy gas shortly after Satcher acquired possession of the purse; and Satcher contacted the victim only after the police had followed her vehicle for about 15 minutes and were in the act of detaining her. The evidence presented supports the inference that Satcher both intended to deprive Ms. Ostolasa-Mendiola of the purse and its contents and did not take reasonable measures to return the purse and its contents to its owner. Indeed, it is hard to draw any conclusion other than that Satcher and her boyfriend intended to use Ms. Ostolasa-Mendiola's credit cards and only changed their minds upon being caught. Satcher's argument, which relies upon an assumption that the jury believed her testimony as long as it "was not directly contradicted" and ignores most of the other evidence (Appellant's brief, pp. 16-20), is legally and factually frivolous.

II.
Satcher Has Failed To Show Reversible Error In The Admission Of Opinion Testimony About Whether Satcher's Statements To Police Were Truthful Because Any Such Error Was Harmless

A. Introduction

The prosecution asked Detective Kendall if, based on his training and experience, he believed Satcher had been truthful in his interview of her. (Trial Tr., p. 320, Ls. 5-7; p. 321, Ls. 15-25.) Satcher objected to the question. (Trial Tr., p. 320, Ls. 8-11; p. 321, Ls. 1-5; p. 322, Ls. 1-14.) The court ultimately allowed the prosecution to ask the detective's opinion on Satcher's truthfulness during the interview, and the detective testified he "did not feel she was being truthful." (Trial Tr., p. 322, L. 23 – p. 323, L. 15.)

On appeal Satcher asserts that the district court erred in admitting evidence of Detective Kendall's opinion as to Satcher's truthfulness.[1] (Appellant's brief, pp. 22-26.) The state concedes that the evidence was inadmissible. See State v. Christiansen, 144 Idaho 463, 468-69, 163 P.3d 1175, 1180-81 (2007) (opinion testimony on truthfulness of other witnesses is inadmissible). However, the error was harmless and Satcher's trial was fair.

[1] Satcher also argues that it was prosecutorial misconduct to ask the detective his opinion as to Satcher's truthfulness in the interview. (Appellant's brief, pp. 29-31.) The state does not concede any claim of prosecutorial misconduct. Although it is prosecutorial misconduct to ask questions seeking inadmissible evidence *as a way of circumventing either the rules of evidence or judicial rulings*, see State v. Christiansen, 144 Idaho 463, 469, 163 P.3d 1175, 1181 (2007) (citing State v. Irwin, 9 Idaho 35, 44, 71 P. 608, 611 (1903)), here the district court ruled the evidence admissible. Thus, the state submits, it is judicial error, not prosecutorial misconduct, at issue here.

B. Standard Of Review For Harmless Error

"Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected ...." I.R.E. 103(a). See also I.C.R. 52 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). "The inquiry is whether, beyond a reasonable doubt, a rational jury would have convicted [the defendant] even without the admission of the challenged evidence." State v. Johnson, 148 Idaho 664, 669, 227 P.3d 918, 923 (2010) (citing Chapman v. California, 386 U.S. 18, 24 (1967); Neder v. United States, 527 U.S. 1, 18 (1999)). The State has the burden of demonstrating that an objected-to, non-constitutional error is harmless beyond a reasonable doubt. State v. Perry, 150 Idaho 209, 222, 245 P.3d 961, 974 (2010).

C. Admission Of Detective Kendall's Opinion That Satcher Was Not Truthful In The Interview Was Harmless Beyond A Reasonable Doubt

"[T]he Constitution entitles a criminal defendant to a fair trial, not a perfect one." Delaware v. Van Arsdall, 475 U.S. 673, 681 (1986). In reviewing for harmless error the court evaluates the potential prejudice from the inadmissible evidence in the context of the evidence presented at trial. See State v. Yager, 139 Idaho 680, 687, 85 P.3d 656, 663 (2004) (error in failing to suppress evidence harmless because probative value of evidence improperly admitted at trial was *de minimus* in light of evidence presented). Review of the record shows that admission of Detective Kendall's opinion that Satcher was untruthful in the interview did not deny Satcher a fair trial because the potential prejudice of the

improper opinion testimony was minimal in light of the evidence presented at trial. Beyond a reasonable doubt a rational jury would have convicted Satcher even without admission of that evidence.

Evidence of opinion testimony that a witness is not truthful is "an invasion of the province of the jury, who are the judges of the credibility of witnesses." State v. Christiansen, 144 Idaho 463, 468, 163 P.3d 1175, 1180 (2007) (internal quotation and citation omitted). "Generally, expert testimony that purports to determine whether a particular witness is truthful on a particular occasion is not permitted because there is no reason to believe that experts are any more qualified to render such opinions than are jurors." Id. (quotations and citations omitted). Thus, the potential prejudice here is that the jurors deferred to Detective Kendall's determination of truthfulness, and thereby reached a determination on truthfulness they would not have reached without the inadmissible opinion testimony, and thus reached a different verdict.

That this potential prejudice did not result in a different verdict than would have been reached without admission of the evidence is shown by three factors. First, the jury already knew or would have surmised that Detective Kendall did not believe Satcher's exculpatory version of events without the challenged evidence. Second, the jury instructions minimized the potential for prejudice by minimizing the chance that the jurors simply deferred to Detective Kendall's opinion instead of forming their own opinions as to the truthfulness of Satcher's statements in the interview. Finally, the evidence at trial overwhelmingly demonstrated that Satcher's statements in the interview were not truthful. These

three factors, individually and cumulatively, show that the error did not affect the outcome of the trial.

First, Detective Kendall's testimony that, in his opinion, Satcher was untruthful in the interview was not information unknown to the jury even without the inadmissible testimony. In the interview Satcher provided a generally exculpatory account of her behavior in relation to the purse, claiming a desire to get it back to its owner and ignorance that her boyfriend had used the credit card. (State's Exhibit 1; see also Trial Tr., p. 300, Ls. 14-24; p. 302, Ls. 5-13; p. 304, L. 7 – p. 306, L. 15; p. 311, L. 23 – p. 312, L. 5.) The fact that Satcher was charged and the detective was a witness against her would have informed any rational jury that the detective did not accept her exculpatory version of events as truthful. (See Trial Tr., p. 325, Ls. 10-14 (detective told Satcher that he would decide "what course the criminal proceedings would take"); p. 328, Ls. 4-8). They also heard evidence that Detective Kendall had repeatedly told Satcher in the course of the interview that he did not believe her. (State's Exhibit 1; Trial Tr., p. 325, Ls. 2-9; p. 327, Ls. 21-24.) The evidence at trial clearly established that Detective Kendall did not believe Satcher's exculpatory version of events; it was therefore unlikely that the inadmissible testimony in any way persuaded the jury to reach a conclusion it would not have reached without the testimony.

Second, the jury instructions minimized any potential for prejudice. The jury was instructed that it was not required to accept all the evidence that was admitted (Trial Tr., p. 463, Ls. 20-21); that it must make its own evaluation of the evidence and assign it what weight it believed the evidence deserved (Trial Tr.,

p. 463, Ls. 21-25); that the jurors should consider their own experiences in evaluating credibility (Trial Tr., p. 464, Ls. 8-15); what factors jurors might consider in evaluating testimony (Trial Tr., p. 464, L. 16 – p. 465, L. 10); and that the jurors were not bound by any expert opinions (Trial Tr., p. 465, Ls. 11-17). The instructions thus made it clear that the jury was not bound by the detective's opinion, and that it was free to make its own determination of Satcher's truthfulness.

Finally, the evidence of Satcher's untruthfulness was overwhelming. Satcher would have had the jury believe that she discovered the purse while looking for her missing wallet (Trial Tr., p. 408, L. 13 – p. 410, L. 4; p. 433, L. 9 – p. 434, L. 18), but once she found the purse she abandoned the search for her own wallet, went shopping elsewhere for two hours, then returned to Walmart to resume the search for her wallet (Trial Tr., p. 453, L. 7 – p. 454, L. 11). She would have the jury believe that she declined to place the purse in the store lost and found because it was not secured (Trial Tr., p. 410, L. 20 – p. 411, L. 12; p. 440, L. 9 – p. 442, L. 18), but then kept it with her or in the van her boyfriend was using for more than two hours before finally making contact with the victim. She would have the jurors believe that after confirming that someone was likely available for a phone call at the purse owner's house (due to a busy signal) (Trial Tr., p. 411, L. 12 – p. 413, L. 9; p. 443, Ls. 2-8), she did not make another call for about two hours despite a desire to return the purse (Trial Tr., p. 418, L. 24 – p. 419, L. 13; p. 443, L. 9 – p. 447, L. 20). The call in which she did make contact with the victim happened to coincide with Satcher being contacted by the police.

(Trial Tr., p. 420, L. 16 – p. 421, L. 3; p. 454, Ls. 12-14.) Finally, she would have the jury believe that her boyfriend, while the purse was placed on the floor of the van between the seats he and Satcher were sitting in, got into the purse that was unfamiliar to him, accessed the wallet that he was, again, unfamiliar with, removed the credit card that he did not know was there, purchased gas with the credit card, returned the credit card, and zipped the purse compartment where the wallet was, all without her knowledge because her dog had strategically positioned itself to prevent her from seeing any of this. (Trial Tr., p. 182, L. 13 – p. 183, L. 18; p. 416, L. 22 – p. 418, L. 5; p. 419, Ls. 15-19; p. 449, L. 9 – p. 452, L. 3.)

In addition, Satcher's version of events conflicted with other evidence. Ms. Ostolasa-Mendiola testified she had an answering machine that had no messages on the day in question (Trial Tr., p. 185, L. 20 – p. 186, L. 1), but Satcher claimed that the victim's phone simply rang without any response when she first tried to call (Trial Tr., p. 412, Ls. 19-24; p. 445, Ls. 7-10). Ms. Ostolasa-Mendiola testified that Satcher told her she had found the purse in a trash dumpster at Walmart (Trial Tr., p. 187, Ls. 1-9; p. 190, Ls. 4-6), but Satcher testified she found the purse in a shopping cart about 75 yards from a recycle bin at the Flying J. (Trial Tr., p. 430, L. 20 – p. 431, L. 16). Satcher had been convicted of two felonies, including one forgery. (Trial Tr., p. 404, L. 17 – p. 405, L. 2.) In addition, Satcher was quick to tell the police that she was trying to return the purse before police even knew a purse was missing (Trial Tr., p. 232, Ls. 3-

13) and she denied using the credit card at a time when she claimed she did not know the credit card had been used (Trial Tr., p. 300, Ls. 14-24).

The record before this Court shows that a rational jury would, beyond a reasonable doubt, have convicted Satcher even without the admission of the challenged evidence. Although Detective Kendall's testimony that in his opinion Satcher was untruthful in the interview was not admissible, there is no basis for believing that the jury abandoned its role as arbiters of credibility or that the jury would have reached a different verdict in the absence of the opinion. The error was harmless.

III.
Satcher Has Failed To Show Reversible Error In The Admission Of Evidence That She Owed Restitution Jointly With Robert Minor In Association With Her Felony Conviction Because Such Error Was Harmless

A. Introduction

The district court ruled that Satcher could be impeached with evidence that she had a prior felony forgery conviction in 2004 and a felony conviction in 2009 (but that the nature of the conviction, grand theft, was inadmissible). (Trial Tr., p. 358, Ls. 19-23; p. 367, Ls. 9-15; p. 373, Ls. 10-21.) The court also ruled, over objection, that to the extent the defense claimed that Robert Minor operated alone when he used the victim's credit card, the state could impeach that evidence with evidence that the restitution order regarding the 2009 felony was joint and several between Satchel and Minor. (Trial Tr., p. 367, L. 5 – p. 369, L. 13; p. 373, L. 10 – p. 374, L. 14.) During direct examination Satcher testified that she had been convicted of forgery in 2004 and a felony in 2009. (Trial Tr., p.

404, L. 17 – p. 405, L. 2.) The evidence presented to the jury regarding the restitution order was, in its entirety, the following two questions and answers:

> Q. The matter for which you're on probation in Canyon County, in 2009, is there an order of restitution in that case?
>
> A. Yes there is.
>
> Q. And does that or – order of restitution include a person named Robert Minor?
>
> A. Yes, sir.

(Trial Tr., p. 405, Ls. 3-9.)

Satcher claims that the district court erred by admitting evidence of the restitution related to the prior felony conviction. (Appellant's brief, pp. 32-38.) The state concedes that evidence that there was a restitution order related to a prior unidentified felony that "include[d] a person named Robert Minor" was irrelevant.[2] I.R.E. 402. The error, however, was harmless.

B. Standard Of Review For Harmless Error

"Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected ...." I.R.E. 103(a). See also I.C.R. 52 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). "The inquiry is whether, beyond a reasonable doubt, a rational jury would have convicted [the defendant] even without the admission of the challenged evidence." State v. Johnson, 148 Idaho

[2] The state's concession is limited to relevance; as set forth more fully below, the state does not concede that the evidence actually admitted was unfairly prejudicial.

664, 669, 227 P.3d 918, 923 (2010) (citing Chapman v. California, 386 U.S. 18, 24 (1967); Neder v. United States, 527 U.S. 1, 18 (1999)). The State has the burden of demonstrating that an objected-to, non-constitutional error is harmless beyond a reasonable doubt. State v. Perry, 150 Idaho 209, 222, 245 P.3d 961, 974 (2010).

C. Any Error From Admission Of Evidence That The Restitution Order In The Prior Undesignated Felony Included Robert Minor Was Harmless

Evidence that Satcher's 2009 unspecified felony conviction resulted in a restitution order that "include[d] a person named Robert Minor," while irrelevant, was not unfairly prejudicial. Satchel argues that the evidence was prejudicial because "the jury would infer the defendant's criminal propensity from that evidence." (Appellant's brief, p. 35.) This argument is illogical. Satcher does not claim that evidence that she was *convicted of a felony* was inadmissible; that the felony conviction also resulted in a restitution order does not somehow unfairly call attention to criminal propensity.

On the face of the record, the jury was very briefly informed that the 2009 conviction for an unspecified felony also resulted in a restitution order that included Robert Minor. Satchel has failed to articulate a plausible reason to believe that this evidence in fact unfairly prejudiced her at trial. Given the weight and volume of the evidence of her guilt, as set forth in more detail above, this passing, irrelevant, reference to restitution was harmless error.

IV.
Satcher Has Failed To Show Cumulative Error

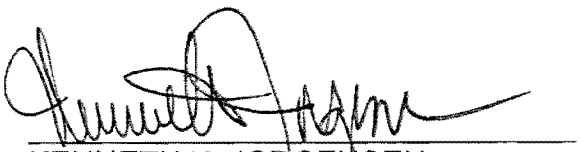
"The cumulative error doctrine refers to an accumulation of irregularities, each of which by itself might be harmless, but when aggregated, the errors show the absence of a fair trial, in contravention of the defendant's constitutional right to due process." State v. Moore, 131 Idaho 814, 965 P.2d 174 (1998) (internal quotation omitted); see also State v. Norton, 151 Idaho 176, ___, 254 P.3d 77, 95 (Ct. App. 2011). "The presence of errors alone, however, does not require the reversal of a conviction." State v. Truman, 150 Idaho 714, ___, 249 P.3d 1169, 1180 (Ct. App. 2010). "[T]he Constitution entitles a criminal defendant to a fair trial, not a perfect one." Delaware v. Van Arsdall, 475 U.S. 673, 681 (1986).

Although the state's concessions that there were two errors in the trial makes the cumulative error analysis applicable, review shows that Satcher received a fair, if imperfect, trial. First, the two errors would not result in prejudice that would have cumulative effect. That the jury was informed there was a restitution order that involved Minor did not bolster Detective Kendall's opinion that Satchel was untruthful in the interview and vice-versa. Second, as shown above, in the context of the whole trial, including the overwhelming evidence of guilt, the inadmissible evidence did not call into question the fairness of the trial.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of conviction.

DATED this 8th day of November, 2011.



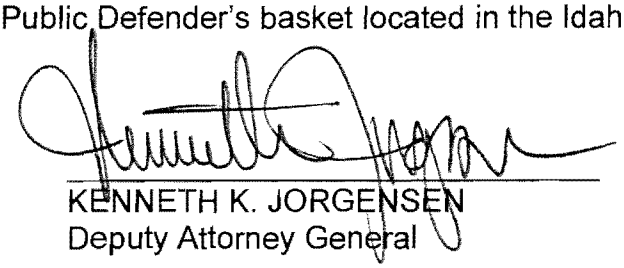
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 8th day of November 2011, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

SARAH E. TOMPKINS
STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



KENNETH K. JORGENSEN
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KKJ/pm